



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,997	04/10/2001	Adam Gabbert	5150-49000	9505
35690	7590	12/08/2005		
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398				
			EXAMINER BONSHOCK, DENNIS G	
			ART UNIT 2173	PAPER NUMBER
DATE MAILED: 12/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/832,997	Applicant(s) GABBERT ET AL.	
	Examiner Dennis G. Bonshock	Art Unit 2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **NON-FINAL REJECTION**

### **Response to Pre-Appeal Brief**

1. It is hereby acknowledged that the following papers have been received and placed on record in the file: Response as received on 8-08-2005.

2. Claims 1-31 have been examined.

Status of Claims:

3. Claims 1-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Kodosky et al., Patent #5,291,587, hereinafter Kodosky.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Kodosky et al., Patent #5,291,587, hereinafter Kodosky.

6. With regard to claim 1, teaching a method for creating a graphical program including a plurality of portions of graphical source code to be executed sequentially, the method comprising: displaying a plurality of frames in the graphical program such that two or more frames are visible at the same time, wherein the graphical program has a plurality of interconnected nodes, being executable on a computer system, Kodosky

Art Unit: 2173

teaches, in column 17, lines 3-40, column 23, lines 24-42, the abstract, and in figures 22, and 57, a graphical programming system in which a two or more frames can be displayed on the display at the same time where elements graphically represent an instrument's operation, and these graphical elements are connected together for modeling a process via execution on a computer. With regard to claim 1, further teaching including a portion of graphical source code in each frame in response to user input, including one or more graphical program nodes in the frame in response to user input, Kodosky teaches, in column 23, line 5 through column 24, line 5 and in column 33, line 54 through column 34, line 55, the user providing input to place frames and other graphical elements on the diagram. The options include: adding graphical elements to the display, copying frames by dragging a copy off of the original, moving graphical elements into frames, etc. With regard to claim 1, further teaching the plurality of frames defining an execution order for the plurality of portions of graphical source code such that during execution of the graphical program the plurality of portions of graphical source code are executed sequentially in accordance with the defined execution order, Kodosky teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the frames being places in a specific execution order by the user wiring them up in that manner. Furthermore Kodosky teaches, in column 11, lines 3-10 and lines 29-38, that inputs must be available before execution of a second can begin, meaning that a previous section must complete execution prior to the next section beginning execution.

Art Unit: 2173

7. With regard to claims 2, 15, and 22, which teach a plurality of frames being displayed in the graphical program such that each frame is visible at the same time, Kodosky teaches, in column 17, lines 3-40, column 23, lines 24-42, the abstract, and in figures 22, and 57, a graphical programming system in which a two or more frames can be displayed on the display at the same time.

8. With regards to claims 3, 16, and 23, which teach receiving user input indicating a desire to specify a plurality of portions of graphical source code to be executed sequentially, wherein displaying the plurality of frames in the graphical program is performed in response to receiving the user input indicating the desire to specify a plurality of portions of graphical source code to be executed sequentially, Kodosky teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the frames being places in a specific execution order by the user wiring them up in that manner. Furthermore Kodosky teaches, in column 11, lines 3-10 and lines 29-38, that inputs must be available before execution of a second can begin, meaning that a previous section must complete execution prior to the next section beginning execution.

9. With regard to claims 4, 17, and 24, which teach the plurality of frames comprised in a sequence structure, wherein displaying the plurality of frames in the graphical program is performed in response to user input indicating a desire to include a sequence structure in the graphical program, Kodosky teaches, in column 23, line 5 through column 24, line 5 and in column 33, line 54 through column 34, line 55, the user providing input to place frames and/or other objections on the diagram. The use can

Art Unit: 2173

create a sequence structure (see column 9, lines 44-51) and move other graphical elements into the sequence structure frame.

10. With regard to claims 5, 18, and 25, which teach each frame being displayed side by side in a left-to-right order, wherein the plurality of frames define an execution order for the plurality of portions of graphical source code such that during execution of the graphical program the plurality of portions of graphical source code are executed sequentially in the left-to-right order, Kodosky teaches, in column 23, line 5 through column 24, line 5 and in column 33, line 54 through column 34, line 55, the user providing input to place frames and other objections on the diagram. The available operations include: adding graphical elements to the display, copying frames by dragging a copy off of the original, moving graphical elements into frames, etc. The user can drag and drop the items so that they are side by side and wire them up in that manner (see column 25, line 50 through column 27, line 7).

11. With regard to claims 6 and 19, which teach executing the graphical program, wherein executing comprises executing each portion of graphical source code sequentially according to the execution order defined by the plurality of frames, Kodosky teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the frames being places in a specific execution order by the user wiring them up in that manner. Furthermore Kodosky teaches, in column 11, lines 3-10 and lines 29-38, that inputs must be available before execution of a second can begin, meaning that a previous section must complete execution prior to the next section beginning execution (sequential execution).

12. With regard to claims 7, 28, and 30, teaching including a portion of graphical source code in the frame in response to user input, further teaching if two or more nodes are included in the frame, interconnecting the two or more nodes in response to user input, Kodosky teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the frames/graphical elements are placed in a specific execution order by the user dragging them in to position (inside or outside of a frame) and wiring them up in any manner.

13. With regard to claim 8, teaching displaying a wire in response to user input, and defining endpoints for the wire in response to user input, such that a first endpoint of the wire is in a first frame having an associated first portion of graphical source code and a second endpoint of the wire in a second frame having an associated second portion of graphical source code, and further teaching the wire being operable to cause data to be passed from the first portion of graphical source code to the second portion of graphical source code during execution of the graphical program, Kodosky teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the frames being places in a specific execution order by the user wiring them up in that manner. Figure 57 displays a case where frames are wired in parallel to one another though system provides for any combination of frames and independent graphical elements wired up in a user chosen manner (parallel or sequential).

14. With regard to claim 9, which teaches including a portion of graphical source code in the graphical program that is not associated with one of the frames, Kodosky teaches in column 23, line 55 through column 24, line 14, the user being able to add

graphical elements (in this case arithmetic functions and curve fit functions) to the display and drag them either into a frame or outside of a frame.

15. With regard to claim 10, which teaches displaying a wire in response to user input, and further teaching defining end points for the wire in response to user input, such that a first endpoint of the wire is in a first frame having an associated first portion of graphical source code and a second endpoint of the wire is in the portion of graphical source code that is not associated with one of the frames, and further teaching the wire operable to cause data to be passed from the first portion of graphical source code to the portion of graphical source code that is not associated with one of the frames during execution of the graphical program, Kodosky teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the frames/graphical elements are placed in a specific execution order by the user dragging them in to position (inside or outside of a frame) and wiring them up in any manner. Kodosky further teaches in column 23, line 55 through column 24, line 14, the user being able to add graphical elements (in this case arithmetic functions and curve fit functions) to the display and drag them either into a frame or outside of a frame.

16. With regard to claim 11, which teaches the execution order in which the first frame comes before a second frame having an associated second portion of graphical source code, and further teaching the data being passed from the first portion to the portion of graphical source code that is not associated with one of the frames without waiting for the second portion of graphical source code to be executed, Kodosky teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the



Art Unit: 2173

frames/graphical elements are placed in a specific execution order by the user dragging them in to position (inside or outside of a frame) and wiring them up in any manner.

Kodosky further teaches in column 23, line 55 through column 24, line 14, the user being able to add graphical elements (in this case arithmetic functions and curve fit functions) to the display and drag them either into a frame or outside of a frame.

Kodosky further teaches, in column 11, lines 3-10 and lines 29-38, that inputs must be available before execution of a element can begin, meaning that a previous section (graphical element or frame) must complete execution prior to the next section (graphical element or frame) beginning execution (sequential execution).

17. With regard to claim 12, which teaches a plurality of frames being a first plurality of frames, including graphical source code in the frames comprises nesting a second plurality of frames in the first frame, and further nesting the second plurality of frames in the first frame comprises: displaying the second plurality of frames in the first frame such that two or more frames of the second plurality of frames are visible at the same time; including a portion of graphical source code in each frame of the second plurality of frames in response to user input; wherein the portions of graphic source code included in the frame of the second plurality of frames comprise a second plurality of portions of graphical source code, and the second plurality of frames define an execution order for the second plurality of portions of graphical source code such that during execution of the first frame in the first plurality of frames, the second plurality of portions of graphical source code are executed sequentially, Kodosky teaches in column 23, line 55 through column 24, line 14, the user being able to add graphical

Art Unit: 2173

elements (in this case arithmetic functions and curve fit functions) to the display and drag them either into a frame or outside of a frame. Kodosky further teaches that these combined groups of elements in a frame can be move about as well placing a frame inside another frame (after possibly resizing the frame to accommodate another set of frames). Kodosky further teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the frames/graphical elements are placed in a specific execution order by the user dragging them in to position (inside or outside of a frame) and wiring them up in a desired manner.

18. With regard to claims 13, 20, and 26, which teach the graphical program being a graphical data-flow program, Kodosky teaches, in column 34, lines 6-11, the graphical program using data flow techniques.

19. With regard to claim 14, which teaches a graphical program including a plurality of portions of graphical source code to be executed sequentially, the system comprising a processor and a memory storing program instructions, Kodosky teaches, in column 33, line 54 through 34, line 11 and in column 8, lines 15-55, the graphical program comprising graphical source code that has a processor coupled to memory. With regard to claim 14, further teaching displaying a plurality of frames in the graphical program such that two or more frames are visible at the same time, wherein the graphical program has a plurality of interconnected nodes, being executable on a computer system, Kodosky teaches, in column 17, lines 3-40, column 23, lines 24-42, the abstract, and in figures 22, and 57, a graphical programming system in which a two or more frames can be displayed on the display at the same time where elements

Art Unit: 2173

graphically represent an instrument's operation, and these graphical elements are connected together for modeling a process via execution on a computer. With regard to claim 14, further teaching including a portion of graphical source code in each frame in response to user input, including one or more graphical program nodes in the frame in response to user input, Kodosky teaches, in column 23, line 5 through column 24, line 5 and in column 33, line 54 through column 34, line 55, the user providing input to place frames and other graphical elements on the diagram. The options include: adding graphical elements to the display, copying frames by dragging a copy off of the original, moving graphical elements into frames, etc. With regard to claim 14, further teaching the plurality of frames defining an execution order for the plurality of portions of graphical source code such that during execution of the graphical program the plurality of portions of graphical source code are executed sequentially in accordance with the defined execution order, Kodosky teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the frames being places in a specific execution order by the user wiring them up in that manner. Furthermore Kodosky teaches, in column 11, lines 3-10 and lines 29-38, that inputs must be available before execution of a second can begin, meaning that a previous section must complete execution prior to the next section beginning execution.

20. With regard to claim 21, which teaches a memory medium for creating a graphical program including a plurality of portions of graphical source code to execute sequentially, Kodosky teaches, in column 33, line 54 through 34, line 11 and in column 8, lines 15-55, the graphical program comprising graphical source code that has a

Art Unit: 2173

processor coupled to memory. With regard to claim 21, further teaching displaying a plurality of frames in the graphical program such that two or more frames are visible at the same time, wherein the graphical program has a plurality of interconnected nodes, being executable on a computer system, Kodosky teaches, in column 17, lines 3-40, column 23, lines 24-42, the abstract, and in figures 22, and 57, a graphical programming system in which a two or more frames can be displayed on the display at the same time where elements graphically represent an instrument's operation, and these graphical elements are connected together for modeling a process via execution on a computer. With regard to claim 21, further teaching including a portion of graphical source code in each frame in response to user input, including one or more graphical program nodes in the frame in response to user input, Kodosky teaches, in column 23, line 5 through column 24, line 5 and in column 33, line 54 through column 34, line 55, the user providing input to place frames and other graphical elements on the diagram. The options include: adding graphical elements to the display, copying frames by dragging a copy off of the original, moving graphical elements into frames, etc. With regard to claim 21, further teaching the plurality of frames defining an execution order for the plurality of portions of graphical source code such that during execution of the graphical program the plurality of portions of graphical source code are executed sequentially in accordance with the defined execution order, Kodosky teaches, in column 17, lines 3-40 and column 25, line 50 through column 27, line 7, the frames being places in a specific execution order by the user wiring them up in that manner. Furthermore Kodosky teaches, in column 11, lines 3-10 and lines 29-38, that inputs

Art Unit: 2173

must be available before execution of a second can begin, meaning that a previous section must complete execution prior to the next section beginning execution.

21. With regard to claims 27, 29, and 31, which teach the graphical program being interpretable or compileable to generate instructions executable by a computer system, Kodosky teaches, in column 27, lines 4-36 and in column 33, line 54 through 34, line 11, executing the user created graphical programming diagram via a the computer system.

### ***Response to Arguments***

22. The arguments filed on 8-08-2005 have been fully considered, but they are not persuasive. Reasons are set forth below.

23. Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis G. Bonshock whose telephone number is (571) 272-4047. The examiner can normally be reached on Monday - Friday, 6:30 a.m. - 4:00 p.m.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on (571) 272-4048. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2173

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11-29-05  
dgb



**RAYMOND J. BAYERL**  
**PRIMARY EXAMINER**  
**ART UNIT 2173**